

**JURY TRIAL IS REQUESTED AND DEMANDED**

United States Bankruptcy Court  
Southern District of New York  
One Bowling Green  
New York, N.Y. 10004-1408

**Lead Case # 09-50026**

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In Re:	)	
	)	<b>Chapter 11</b>
GENERAL MOTORS CORP., et. al.,	)	<b>Case # 09-0950026</b>
	)	(Gerber)
Debtors	)	Jointly Administered

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**ADVERSARIAL COMPLAINT**

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Radha Ramana Murty Narumanchi (Murty) & Radha Bhavatarini Devi Narumanchi (Devi)	Plaintiffs <u>Pro Se</u>	) Adversarial Complaint # _____
vs.		)
(1) General Motors Corporation (GM)		)
(2) Wilmington Trust Company (WTC)		)
(3) Timothy F. Geithner (Geithner), Secretary of Treasury, U.S. Govt.		)
(4) Steven Rattner (Rattner), U.S. President's nominee & Head Of Auto Task Force (ATF) in the Treasury Department		)
(5) Ron Bloom (Bloom), Member, ATF		)
(6) Mathew Feldman (Feldman), Member, ATF		) <b><u>Dated: June 16, 2009</u></b>
(7) Harry J. Wilson (Wilson), Member, ATF		)
(8) Kent Kresa (Kresa), Chairman of GM		)
(9) Frederick "Fritz" Henderson (Henderson), President & CEO of GM		)
	DEFENDANTS	)

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**Part One (A) – Party Plaintiffs**

1.0 Radha Ramana Murty Narumanchi (Murty) and Radha Bhavatarini Devi Narumanchi (Devi) are domiciles of Connecticut State, with a legal residential address at: 657 Middletown Avenue, New Haven, Connecticut 06513, since 1976. They are also citizens of the United States of America since 1971 .

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1.1 Both are pursuing this adversarial complaint as *Pro Se* plaintiffs.

1.2 Plaintiffs have legal standing to bring this action, since they own unsecured GM senior debentures (8.375% due in 2033) in the face value of \$400,000 for which they had paid full par value in hard cash. They bought these bonds in different lots and have owned them since at least January 2005. They are, therefore, creditors in the current GM's Chapter 11 proceedings<sup>1</sup>.

1.3 Plaintiffs are also "a party in interest" as that term and phrase are well understood in bankruptcy proceedings<sup>2</sup>.

**Part One (B) – Party Defendants**

2.0 The bankrupt party, General Motors Corporation (GM), is said to be a corporate citizen of Delaware State, with an address at: 300 Renaissance Center, Detroit, Michigan 48265-3000, as well as a second address at: 767 Fifth Avenue, New York, N.Y. 10153. GM is our first defendant.

2.1 Wilmington Trust Company (ATF), the Second Defendant's state of corporate citizenship is of Delaware State, with an address at: Rodney Square North, 1100 North Market Street, Wilmington , Delaware 19890.

2.2 The third defendant is Timothy F. Geithner (Geithner), Treasury Secretary for the United States Government. His official address is: Department of Treasury, 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220.

2.3 The fourth defendant is Steven Rattner (Rattner), President's nominee on Auto Task Force (ATF), working from the basement of the Department of Treasury, 1500 Pennsylvania Avenue, NW. Washington D.C. 20220.

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<sup>1</sup>Plaintiffs intend to file their claim when they receive the notice of the "bar date" and a registry for such claims is opened.

<sup>2</sup>Separately, plaintiffs are filing their objections to the proposed Section 363 sale.

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2.4 The fifth defendant is Ron Bloom (Bloom), a member of ATF, working from the basement of the Department of Treasury, 1500 Pennsylvania Avenue, NW, Washington D.C. 20220.

2.5 The sixth defendant is Mathew Feldman (Feldman), a member of ATF, working from the basement of the Department of Treasury, 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220.

2.6 The seventh defendant is Harry J. Wilson (Wilson), also a member of ATF, working from the basement of the Department of Treasury, 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220.

2.7 The eighth defendant is Kent Kresa (Kresa), Chairman of the Board of Directors of the bankrupt GM with the address at: 300 Renaissance Center, Detroit, Michigan 48265-3000.

2.8 The ninth defendant is Frederick "Fritz" Henderson (Henderson), President and CEO of the bankrupt GM with the address at: 300 Renaissance Center, Detroit, Michigan 48265-3000.

**Part Two – Different Counts of Adversary Complaint and Remedies Requested**

**(A) – Count # 1**

3.1 Bankrupt defendant GM had started its automotive manufacturing operations in the USA about 100 years ago and reached the No. 1 position, globally, but then between the years 2005 and 2008, it had suffered massive losses, year after year, for a variety of reasons, chief among them being the extraordinarily runaway high labor costs. The massive losses during the years 2005 to 2008 in the amount of 84 billion dollars (\$84,000,000,000) as follows:

<b>(In Millions of Dollars)</b>		
	Amount of Net Income/ <u>(Net Loss) for the</u>	Net worth or Stockholders Equity/(Deficit) <u>At the end of:</u>
<u>From Page 29 of 4-27-2009 GM's Exchange Offer:</u>		
Year 2005	(\$10,417)	\$14,442
Year 2006	(\$1,978)	(\$ 5,652)
Year 2007	(\$38,732)	(\$37,094)
Year 2008	(\$30,860)	(\$86,154)

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3.1.1 From these numbers admitted by the bankrupt defendant, in its published financial statements, it is obvious that some time during the year 2006, it had entered into the zone of “insolvency”<sup>3</sup>, and the stockholders’ equity was not only wiped out in full, but the company had also reached a point of no return as a “going concern”.

3.1.2. Notwithstanding the insolvency, the bankrupt has failed, at least since some time in the year 2006, to protect the true and real best interests of the unsecured bondholders which stood at an aggregate amount of \$27,378,898,712<sup>4</sup>. The insolvent and now the bankrupt GM has failed in its fiduciary duty and

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<sup>3</sup>We perfectly understand that the published financial statements by the insolvent, and now the bankrupt GM, applying “historical cost” bases, under the U.S. Generally Accepted Accounting Principles (GAAP), are not determinative of insolvency, but even if fair values and appreciation of assets are taken into account, and present values of liabilities are subtracted from such asset values, we are sure it will still show dozens of billions of dollars in accumulated deficit, i.e. a full blown state of insolvency, as a matter of reality. Moreover, if fair values are to be taken into account, then, where assets have declined in values, the concept of mark-to-market GAAP rule should also be implemented, which would obviously show a much deeper insolvency problem for the bankrupt GM.

<sup>4</sup> Of this amount, the bond debt in the USA consisted of \$22,759,871,912 (with Wilmington Trust Company as the trustee); another bond debt of \$175,976,800 with Bank of New York Mellon as the trustee; and European debt of \$4,444,050,000. Assuming that the average investment per US family is about \$50,000 in 46% of GM’s unsecured bonds of \$22,759,871,912 (it is assumed that about 54% is held by institutional and otherwise large scale investors), there may be **at least 210,000 US households** that are holding this unsecured debt of GM across this nation. Imagine how these **210,000 U.S. families** will be devastated when their life savings are brought to a zero value when the Obama administration is asking these low and middle income houses to make 100% sacrifices and become paupers, in the name of saving just high priced 60,000 jobs of GM workers (we assume these GM workers are the political allies of Obama administration). We submit that any loss of this proportion and magnitude should not be imposed on just the low and middle income families (**the voiceless and defense-less casualties and victims**), but if it is a matter of public policy to save the 60,000 (again the political allies of Obama administration and the democratic party) jobs of high-priced workers, then the loss should be spread across the nation by having the Federal Government (U.S. Treasury) absorb the entire loss under an appropriate congressional authorization and appropriation. Otherwise, it would become expropriation of private property, under the dictaates and duress of the executive branch, which is totally prohibited under the U.S. Constitution.

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responsibilities to the unsecured bondholders.<sup>5</sup>

3.1.3 The following are the specific instances of gross negligence and total breach of fiduciary duty committed by the bankrupt GM, to the unsecured bondholders, during the period of its insolvency<sup>6</sup>:

- (i) Pledging the “crown jewels” of the Corporation to the U.S. Treasury and thereby reducing the ability of the unsecured bondholders to achieve a maximum recovery of their investment;
- (ii) Deepening the insolvency period of the bankrupt corporation and further wasting and dissipating the precious cash and assets of the corporation, and incurring additional liabilities, even after receiving about seventeen billion dollars (\$17,000,000,000) from the U.S. Treasury; The inflow of funds from the U.S. Treasury to GM might have exceeded \$20,000,000,000 by now.
- (iii) Giving away the so-called severance payments to employees of insolvent GM, running into billions of dollars, during its period of actual insolvency, to the detriment of the unsecured bondholders;
- (iv) Paying dividends to stockholders even after the company had entered into a state of insolvency, to the detriment of the unsecured bondholders; and
- (v) Engaging and paying so-called consultants of all stripes and hues, in dozens of millions of dollars during the state of insolvency to the detriment of the unsecured bondholders.

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<sup>5</sup> We are **not** stating here that we represent all the unsecured bondholders of GM. We are just interested in our own holding of \$400,000 worth of 8.375% Senior Debentures due 7-15-2033, and the loss we would suffer if the bankrupt GM is allowed to sell all its crown jewels to a “good GM” headed by the U.S. Treasury, leaving all trashy, and worthless trinkets, to a “bad GM”, to the detriment of the unsecured bondholders.

<sup>6</sup> We are sanguine and hopeful that the various creditor committees (yet to be formed in accordance with a request we are making hereunder) will investigate other illegal acts by the bankrupt GM through its directors, agents, officers, attorneys, et al. that could, would, and should be treated as illegal and criminal usurpation of the assets of the unsecured creditors, gross negligence and breach of fiduciary responsibilities to the unsecured bondholders.

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**(A) - Count # 1 - Remedies Sought**

3.1.4.1 A Declaratory judgment that defendant GM has been in a state of insolvency since at least the year 2006. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.1.4.2 A Declaratory judgment that the U.S. Department of Treasury, and any and all Auto Task Force (ATF) members thereof, including U.S. President's nominee, Steven Rattner, are "insiders" of the bankrupt GM, for the purpose of these bankruptcy proceedings; and also a Declaratory Judgment that all such personnel have/had the fiduciary duty, during GM's state of insolvency, to protect the interests of the unsecured bondholders and other creditors. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.1.4.3 A Declaratory judgment that the intervention of U.S. Treasury and any and all funds made available extended by the U.S. Treasury have, in fact, deepened and prolonged the insolvency of GM, to the detriment of the unsecured bondholders - in fact the asset values of GM have deteriorated to the detriment of the unsecured bondholders during this period of deepened and prolonged insolvency of GM. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.1.4.4 A Declaratory judgment that any document witnessing any and all pledging of assets to the U.S. Treasury, by GM, since the last quarter of 2008, is "null and void" *ab initio*; and also a Declaratory judgment that all funds given by the U.S. Treasury to GM since the last quarter of 2008 are/were in fact capital contributions to GM, and not loans (and especially not secured loans). Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.1.4.5 A Declaratory judgment that GM had utterly failed in its fiduciary duty and responsibilities to unsecured bondholders during its state of insolvency, and further continues with its behavior of not fulfilling its fiduciary duty and responsibilities towards unsecured creditors, and, therefore, all the

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instant personnel of GM are removed from making any representation in this court on behalf of GM.

Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.1.4.6 Appoint a "Trustee" or a "Board of Trustees" or a "Receiver" to run the affairs of the bankrupt GM and make any submissions for reorganization of GM before this bankruptcy court.

3.1.4.7. Appoint an independent "Receiver" or "Examiner" or "Trustee" to examine the pay outs in dozens of millions of dollars to outside consultants, in terms of cost and benefit analysis, and to institute appropriate recovery or restitution proceedings against such culprits.

3.1.4.8 Also authorize the person(s) appointed under item (7) above, to examine the so-called severance amounts paid to employees of GM that run into billions of dollars, during the period of insolvency of GM and institute appropriate recovery or restitution proceedings against such recipient individuals.

3.1.4.9 Also authorize the person(s) appointed under item (7) above, to institute proceedings against all members of the Board of Directors of GM, individually and collectively, to recover or to have them retribute all the amounts paid as dividends to stockholders even after the company had entered into a state of insolvency, to the detriment of the unsecured bondholders.

3.1.4.10 Appoint a separate creditors (bondholders) committee to represent the unsecured bondholders, comprising of individuals and families, as follows:

Unsecured Creditors' Committee for Family Investors : To specifically represent all individuals and families that hold the unsecured bonds of GM in the aggregate amount of *lesser* than one million dollars (\$1,000,000) *per individual* or *lesser* than \$1,500,000 *per family*, but where the *cost basis* of the investment is *specifically greater than* 85% of the face value of such bond holdings.

**(B) - Count # (2) Two**

3.2 Defendant Wilmington Trust Company (WTC) is the current trustee for the unsecured debt securities issued by defendant GM, under an indenture issued in December 1995.

3.2.1 Article 4.06 of the said trust deed (or indenture) prohibits GM from issuing any debt on which

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security interest would be granted on the assets of GM, to the detriment of unsecured debt security holders. Notwithstanding such a provision GM had entered into at least two security interests agreements with the U.S. Treasury Department. WTC did not take suitable action (legal or otherwise) against GM for violation of the covenants of the indenture. Nor did WTC notify all unsecured bondholders (debt securities), including the plaintiffs herein, of the violation of the indenture by GM.

3.2.2 As a result of gross incompetence, gross failure to take timely remedial action, on the part of defendant WTC, and also utter failure on the part of WTC to discharge its fiduciary duties, obligations, and responsibilities, now plaintiffs are on the verge of losing virtually their entire investment of \$400,000 plus accrued interest in the amount of \$16,375, in the unsecured debt of GM, due to voluntary filing of Chapter 11 bankruptcy on 6-1-2009 by GM.

**(B) Count # (2) Two – Remedies Requested.**

3.2.3.1 A Declaratory Judgment that defendant Wilmington Motors Corporation, as a Trustee, has failed in its fiduciary duties, obligations, and responsibilities towards unsecured bondholders (of debt securities).

3.2.3.2 A Money Damages Judgment in the full amount of loss sustained by all unsecured bondholders, including the plaintiffs, as well as for any future losses that may take place in the investment of the unsecured bondholders.

**( C ) – Count # (3) Three**

3.3.1 It is said that the “field general” in the efforts of the U.S. Treasury Department to revamp GM is defendant Wilson. This is a self-styled expert in “restructuring distressed assets”. He invited himself to join the U.S. President’s Auto Task Force (ATF) by specifically writing to ATF’s head honcho, defendant Rattner, who is the nominee of the U.S. President. A former hedge-fund star, in his past life, defendant Wilson appears to have become a “key voice” inside the ATF , leading a small clique known

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as the “deals and diligence team”. Obviously, defendant Wilson spent his time between GM’s offices in Detroit, Michigan, and the Treasury Department in Washington, D.C.

The other defendant, Rattner, an investment banker<sup>7</sup>, who, according to public records, owes federal taxes to the tune of \$20,000,000 to \$25,000,000<sup>8</sup>, is said to have played a “more central or contentious role” in the auto bailout. It is also said that defendant Rattner had campaigned openly for the job of being President’s nominee to the ATF, and its head honcho<sup>9</sup>, and credited with using “blunt force”, “big dollars”, “power of the Treasury”<sup>10</sup>, “gambling with taxpayers’ dollars”, and mostly “President’s bully pulpit”, to cajole and bully the unsecured bondholders of GM, to agree to voluntarily put their heads under ATF’s guillotine (and very unfortunately through this bankruptcy court)<sup>11</sup>.

Bloom, yet another defendant, and a member of ATF, is said to have deep ties to organized labor (or is it an organized crime syndicate ?) and is a pivotal member of ATF. Defendant Feldman, is yet another member of ATF.

3.3.2 The Treasury Department, since at least the last quarter of the year 2008, and also ATF since its formation in the first quarter of the year 2009 had known or should have known that GM had been

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<sup>7</sup> We should presume that he ceased from participating in his investment banking activities, and put all his assets in a blind trust (or liquidated them), once he accepted the head-honcho-ship of ATF.

<sup>8</sup> This should surprise no one in this country, nor this bankruptcy court, because, very very unfortunately, most of the candidates selected by President Obama, a man that wanted to bring “change”, are found to be tax evaders, tax cheats or scofflaws, and the nominations had to be withdrawn the very moment such nominations were announced.

<sup>9</sup> It is said that this unsavory defendant has stirred controversy, in a pension-fund pay-to-play scandal in New York.

<sup>10</sup> We are sure that this defendant is going to have triple or quadruple fun (or even a higher multiplier) with about \$40,000,000,000 of taxpayers’ money to pay-and-play.

<sup>11</sup> It is needless to say that this bankruptcy court is the only competent judicial authority to prevent and stop the ATF (and the U.S. Treasury) and GM from **guillotining about 215,000 U.S. households, in this dastardly human sacrifice ritual.**

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insolvent since at least some time in the year 2006.

3.3.3 The U.S. Treasury (and the ATF) who had extensively poured over the financial statements and other statistical data of GM, and did extensive analysis of the same, in consultation with outside and inside experts (where they spent millions of dollars, including some bankruptcy attorneys <sup>12</sup>) had known or should have known that any funds extended by it out of the taxpayers dollars, to insolvent GM, would never be recovered. Period.

3.3.4 Notwithstanding the clear undertaking by GM in its indenture of 1995 that it would not create any liens against its assets in order to safeguard the interests of the unsecured bondholders, the U.S. Treasury and ATF have bullied, instigated, and succeeded in creating **two** fictitious documents creating liens<sup>13</sup> in favor of U.S. Treasury, on the top of imposing onerous and impractical conditions and stipulations to have the unsecured bondholders debt reduced voluntarily to nothing but a zero value. Thus, these defendants have made GM cause a breach of contract with its unsecured bondholders.

3.3.5 U.S. Treasury (under the leadership of defendant Geithner) and ATF have committed an actionable tort in making aiding abetting GM to breach its indenture, to the detriment of unsecured bondholders.

3.3.6 The actions of U.S. Treasury in providing funds to GM has deepened the insolvency of GM, i.e. fraudulently prolonging GM's corporate life beyond insolvency<sup>14</sup>. The Treasury and ATF providing any

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<sup>12</sup> This is a clear indication that the U.S. Treasury and ATF were highly skeptical and deeply unsure about recovery of any funds.

<sup>13</sup> It is said, as per the exchange of debt offer document, that the First U.S. Treasury Loan Agreement was dated 12-31-2008; the Second U.S. Treasury Loan Agreement was dated 1-16-2009; and the modifications to these two agreements were on 3-31-2009.

<sup>14</sup> This harm had occurred when GM lacked the necessary cash or readily convertible- to- cash assets, and it also lacked the necessary income to pay either interest or pay off any borrowings, or both, assuming that U.S. treasury amounts were genuine loans, which they are, in fact, not.

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any funds to GM has harmed the creditors, especially the unsecured bondholders, and it made it more difficult for GM to run a profitable business without recording to bankruptcy.

3.3.7 The U.S. Treasury and ATF maintained a strangle hold on GM, and when its past CEO, Rick Wagoner had proposed to convert the unsecured bondholders' debt into 90% of equity (Preferred and/or common stock to reduce the debt load) in any reorganized GM, ATF and the U.S. Treasury had prevailed upon the Board of Directors of GM to unceremoniously kick him out of his job and place a compliant CEO in his stead.

3.3.8 There are many instances of obnoxious control and behavior by the ATF personnel in interfering in the day-to-day operations of GM. More to be discovered after a discovery process. For all practical purposes and intents the U.S. Treasury and ATF could not be separated from the GM's own Board of Directors and Officers, i.e. to say that the U.S. Treasury and ATF were and continue to be *de facto* and *de jure* "insiders"<sup>15</sup>, inasmuch as the funds provided by them to GM were nothing but infusion of capital i.e. equity investment<sup>16</sup>.

**( C ) - Count # (3) Three – Remedies Sought**

3.3.9.1 A Declaratory Judgment that GM has been in a state of insolvency since at least the year 2006. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.3.9.2 A Declaratory judgment that the U.S. Department of Treasury, and any and all Auto Task Force (ATF) members thereof, including U.S. President's nominee, Steven Rattner, are "*insiders*" of the bankrupt GM, for the purpose of these bankruptcy proceedings; and also a Declaratory Judgment that all

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<sup>15</sup> We submit that as corporate "insiders", the U.S. Treasury and ATF have the fiduciary duty, obligation, and responsibility to protect the interests of the unsecured bondholders.

<sup>16</sup> Unfortunately, the \$20,000,000,000 or so of cash funds injected into GM by the U.S. Treasury, since the last quarter of the year 2008, there is no corporate "trust fund" available, as of the date of Chapter 11 filing.

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such personnel have/had the fiduciary duty, during GM's state of insolvency, to protect the interests of the unsecured bondholders and other creditors. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.3.9.3 A Declaratory judgment that the intervention of U.S. Treasury and any and all funds made available extended by the U.S. Treasury have, in fact, deepened and prolonged the insolvency of GM, to the detriment of the unsecured bondholders - in fact the asset values of GM have deteriorated to the detriment of the unsecured bondholders during this period of deepened and prolonged insolvency of GM. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.3.9.4 A Declaratory judgment that any document witnessing any and all pledging of assets to the U.S. Treasury, by GM, since the last quarter of 2008, is "null and void" *ab initio*; and also a Declaratory judgment that all funds given by the U.S. Treasury to GM since the last quarter of 2008 are/were in fact capital contributions to GM, and not loans (and especially not secured loans), and hence subordinate to unsecured bondholders. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.3.9.5 A Declaratory judgment that the U.S. Treasury and ATF and all members and personnel thereof, had utterly failed in their fiduciary duty, obligations, and responsibilities to unsecured bondholders during its state of insolvency, and further continue with their behavior of not fulfilling its fiduciary duty and responsibilities towards unsecured creditors, and, therefore, all the instant personnel of U.S. Treasury and ATF, along with GM personnel are removed from making any representation in this court on behalf of U.S. Treasury and GM. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.3.9.6 Appoint a "Trustee" or a "Board of Trustees" or a "Receiver" to run the affairs of the bankrupt GM and make any submissions for reorganization of GM before this bankruptcy court.

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3.3.9.7 Appoint an independent "Receiver" or "Examiner" or "Trustee" to examine the pay outs in dozens of millions of dollars to outside consultants, in terms of cost and benefit analysis, and to institute appropriate recovery or restitution proceedings against such culprits.

3.3.9.8 Also authorize the person(s) appointed under item (7) above, to examine the so-called severance amounts paid to employees of GM that run into billions of dollars, during the period of insolvency of GM and institute appropriate recovery or restitution proceedings against such recipient individuals.

3.3.9.9 Also authorize the person(s) appointed under item (7) above, to institute proceedings against all members of the Board of Directors of GM, individually and collectively, to recover or to have them retribute all the amounts paid as dividends to stockholders even after the company had entered into a state of insolvency, to the detriment of the unsecured bondholders.

**(D) – Count # (4) Four**

3.4.1 Defendants Kresa and Henderson are members of the Board of Directors of GM, Kresa being its chairman and Henderson its President and CEO.

3.4.2 As members of the Board of Directors, and as the top officers of the corporation, they had known or should have known that the General Motors Corporation, had entered the zone of "insolvency" some time during the year 2006.

3.4.3 Notwithstanding the state of insolvency of GM, as members of the Board of Directors, these two defendants (of course, along with numerous other members) had approved, authorized, and paid cash dividends to the common stockholders, to the detriment of the interests of unsecured bondholders. Such dividends were paid through the second quarter of the year 2008. These two defendants had known or should have known that payment of dividends to stockholders during the state of insolvency of the corporation is illegal, and hence the directors that authorized and paid any cash dividends to shareholders during the insolvency of the corporation, would be liable individually and jointly, to retribute such

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payments.

3.4.4 The GM Corporation had entered into a solemn agreement, through its 1995 indenture, to protect the interests of unsecured bondholders. The GM corporation made a promise and undertaking in its indenture not to have any liens laid on any of its assets under any future borrowings. The two defendants Kresa and Henderson have, however, deliberately violated such solemn undertaking by allowing the U.S. Treasury hold secured liens on the assets of the GM Corporation, the first such act taking place on 12-31-2008, and yet another second act taking place on 1-16-2009. These two acts constitute a breach of fiduciary duty, obligations, and responsibilities by the two defendants towards the unsecured bondholders. These two defendants are responsible for any loss to the unsecured bondholders which may run into billions of dollars, and hence such losses must be properly restituted to all unsecured bondholders that had suffered losses.

3.4.5 These two defendants had also caused payments made to workers of GM, in billions of dollars, as severance pay, when the corporation was in a state of insolvency. Such payments were to the detriment of the unsecured bondholders. Such payments have caused incalculable harm and damage to the best interests of the unsecured bondholders. These two defendants had failed in their fiduciary duty, responsibility, and obligations to unsecured bondholders, during the period of insolvency of the corporation. Therefore, any and all payments made to GM workers under the rubric of severance pay require to be accounted for and properly restituted by these two defendants, individually and jointly.

3.4.6 These two defendants had also engaged and paid vast amounts of money to the so-called consultants and experts of all stripes, hues, and colors, which sums run into dozens of millions of dollars, to the detriment of unsecured bondholders, during the state of insolvency of the corporation. Such funds need to be restituted by these two defendants, since they dissipate the funds that should be available to unsecured bondholders.

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3.4.6 These two defendants should have been holding up to their fiduciary responsibilities, duties, and obligations, during insolvency of the corporation. Instead, they have been working against the best interests of the unsecured bondholders. As such, these two defendants deserve to be removed from their positions and replaced with some other individuals who will safeguard the best interests of the unsecured bondholders.

**(D) - Count # (4) Four – Remedies Sought**

3.4.7.1 A Declaratory Judgment that GM has been in a state of insolvency since at least the year 2006. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.4.7.2 A Declaratory judgment that the U.S. Department of Treasury, and any and all Auto Task Force (ATF) members thereof, including U.S. President's nominee, Steven Rattner, are "insiders" of the bankrupt GM, for the purpose of these bankruptcy proceedings; and also a Declaratory Judgment that all such personnel have/had the fiduciary duty, during GM's state of insolvency, to protect the interests of the unsecured bondholders and other creditors. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.4.7.3 A Declaratory judgment that the intervention of U.S. Treasury and any and all funds made available extended by the U.S. Treasury have, in fact, deepened and prolonged the insolvency of GM, to the detriment of the unsecured bondholders - in fact the asset values of GM have deteriorated to the detriment of the unsecured bondholders during this period of deepened and prolonged insolvency of GM. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.4.7.4 A Declaratory judgment that any document witnessing any and all pledging of assets to the U.S. Treasury, by GM, since the last quarter of 2008, is "null and void" *ab initio*; and also a Declaratory judgment that all funds given by the U.S. Treasury to GM since the last quarter of 2008 are/were in fact capital contributions to GM, and not loans (and especially not secured loans), and hence subordinate to

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to unsecured bondholders. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.4.7.5 A Declaratory judgment that the U.S. Treasury and ATF and all members and personnel thereof, had utterly failed in their fiduciary duty, obligations, and responsibilities to unsecured bondholders during its state of insolvency, and further continue with their behavior of not fulfilling its fiduciary duty and responsibilities towards unsecured creditors, and, therefore, all the instant personnel of U.S. Treasury and ATF, along with GM personnel (including defendants Kresa and Henderson) are removed from making any representation in this court on behalf of U.S. Treasury and GM. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.4.7.6 Appoint a "Trustee" or a "Board of Trustees" or a "Receiver" to run the affairs of the bankrupt GM and make any submissions for reorganization of GM before this bankruptcy court.

3.4.7.7 Appoint an independent "Receiver" or "Examiner" or "Trustee" to examine the pay outs in dozens of millions of dollars to outside consultants, in terms of cost and benefit analysis, and to institute appropriate recovery or restitution proceedings against such culprits.

3.4.7.8 Also authorize the person(s) appointed under item (7) above, to examine the so-called severance amounts paid to employees of GM that run into billions of dollars, during the period of insolvency of GM and institute appropriate recovery or restitution proceedings against such recipient individuals.

3.4.7.9 Also authorize the person(s) appointed under item (7) above, to institute proceedings against all members of the Board of Directors of GM, individually and collectively, to recover or to have them retribute all the amounts paid as dividends to stockholders even after the company had entered into a state of insolvency, to the detriment of the unsecured bondholders

3.4.7.10 Issue a Declaratory Judgment that defendants Kresa and Henderson have failed in their fiduciary duties, responsibilities, and obligations towards unsecured creditors by committing unlawful and illegal

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acts, and also breaching solemnly affirmed contractual obligations enshrined in the 1995 indenture of GM.

3.4.7.11 Issue a Money Judgment for the losses deliberately caused to the unsecured bondholders, in an amount to be determined during the trial, with jury as finders of fact.

RESPECTFULLY SUBMITTED.

Dated at New Haven, this 16<sup>th</sup> day of June, 2009.

CREDITORS AND PLAINTIFFS IN THE  
ADVERSARIAL COMPLAINT (*Pro Se*)

  
6/16/2009   
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